IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09/03/2004

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THE HONOURABLE MR.JUSTICE C.NAGAPPAN

W.P.No.16658 of 1996

The Management of
Tamil Nadu Civil Supplies
Corporation Ltd., rep. by
its Senior Regional Manager,
P.B.No.69,
Thanjavur-631 001. .. Petitioner

-Vs-

1.The Presiding Officer,
Labour Court,
Cuddalore.

2.A.Panneerselvam .. Respondents

Writ petition filed under Article 226 of the Constitution of India
praying to issue a writ of certiorari as stated therein.

For petitioner : Ms.D.Veda
for M/s.Meenakshisundaram.

For respondents : Mr.A.Shanmugasundaram for R2.

:ORDER

The petitioner has sought for issuance of writ of certiorari to quash the award dated 18.10.1995 passed in I.D.No.507 of 1992 by the first respondent.

2. The second respondent was initially employed as a casual labourer at Modern Rice Mill, Tiruvarur on daily wage basis at Rs.5/- and by order dated 14.9.1981 his wage was fixed at a consolidated amount of Rs.200/- per month with effect from 1.11.1981. It is further stated by the petitioner that the second respo ndent along with four others was appointed by proceedings Rc.No.754/82/A-8 dated 27.5.1983 of the petitioner to the post of casual labourer on daily wages of Rs.7/- and posted at Modern Rice Mill at Thirunageswaram and to be regularised on a time scale subject to satisfactory performance during one year of probation. It is further stated by the petitioner that with effect from 1.10.1984, the second respondent's salary was fixed with time scale of pay and he failed to turn up for work on 8.11.1985

and a leave letter dated 8.11.1985 was received from him in which he had requested for leave for one month on medical grounds. The petitioner has further stated that since there was no leave to his credit, by letter dated 13.12.1985 the second respondent was informed by the petitioner that the leave asked for was refused and he was directed to report for duty. According to the petitioner, the order sent to the second respondent by registered post to his residential address was returned unserved with postal endorsement on the cover "LEFT INDIA. RETURNED TO SENDER" and local enquiries revealed that the second respondent had gone abroad without intimation and permission. It is further stated by the petitioner that it was felt that no useful purpose would be served by keeping the second respondent on roll and by order dated 2 7.2.1986 the second respondent was terminated.

According to the petitioner, a representation dated 2.11.1988 was received from the second respondent in which reconsideration of the order of termination was sought for on the ground that no enquiry was conducted before terminating the service and that plea was rejected by the petitioner. The second respondent by petition dated 5.11.1990 moved the Conciliation Machinery under Section 2-A of the Industrial Disputes Act alleging that the termination without enquiry or notice is void and illegal and sought for reinstatem ent. The Labour Officer by communication dated 31.5.1991 reported failure of settlement and the second respondent filed his claim statement before the First Additional Labour Court, Madras and after constitution of Labour Court at Cuddalore, the case was transferred and re-numbered as I.D.No.507 of 1992. According to the petitioner, it filed counter statement on 21.7.1993 and before the first respondent Labour Court, the second respondent examined himself and marked four documents and the petitioner examined one witness and marked five documents. The first respondent passed award reinstating the second respondent with continuity of service but without backwages and attendant benefits giving liberty to the petitioner to take disciplinary action against the second respondent for his unauthorised absence for three years and going out of India without intimation. The petitioner has challenged the award as illegal and seeks to quash the same.

3. The second respondent in his counter has stated that his service has been terminated by the petitioner on 8.11.1985 without conducting an enquiry and no opportunity was given to him and the order of termination has been passed arbitrarily violating the principles of natural justice. It is further stated in the counter that the petitioner did not prove the misconduct by conducting an enquiry and the procedure laid down in the Industrial Disputes Act was not followed to terminate the service and the award directing the petitioner to reinstate the second respondent is sustainable in law.

4. Heard the learned counsel for the petitioner as well as the second respondent.

5. The learned counsel for the petitioner contends that the second respondent was on continued unauthorised absence from 8.11.1985 till 2.11.1988 and having admittedly been out of India without any intimation, it must be deemed that he has abandoned his employment and even if an enquiry was to be held by means of public notice, such an enquiry would have been a technical and empty formality and in the circumstances of the case, the action of the

petitioner Management cannot be faulted for not holding an enquiry and the award of reinstatement of second respondent is erroneous in law and liable to be set aside.

6. Per contra, the learned counsel for the second respondent contends that removal from service without conducting any enquiry is illegal and the procedure has not been followed in terminating the second respondent from service and the award of the Labour Court directing the petitioner to reinstate the second respondent is legal and proper.

7. The second respondent failed to turn up for work on 8.11.1985 and his request for leave for one month was refused by the order of the petitioner, dated 13.12.1985 and that order sent by registered post returned unserved with postal endorsement on the cover 'Left India. Returned to Sender' and the petitioner terminated his services on 27.2 .1986. For better appreciation, the termination order is extracted below.

"The Assistant Manager (E)/MRM/TNGM has reported that Thiru A. Panneerselvam/CL/HFF stayed away from duty from 08.11.1985. A Notice was issued by the AM(E)/MRM/TNGM to the individual by Regd. Post directing him to join duty immediately.

The AM/MRM/TNGM has further stated that the regd. post has been returned with an endorsement that the individual had left India. The AM/MRM/TNGM has recommended for termination of his services from the Corporation.

The services of Thiru.A.Panneerselvam C.L (HFF/MRM/TNGM) is terminated with effect from 08.11.1985 (i.e.) the date from which he stayed away from duty."

It is clear that the second respondent has been terminated without being informed by public notice and without holding a domestic enquiry and that termination order came to be challenged.

8. The contention of the petitioner management is that even if an enquiry was to be held, it would have been an empty formality since the petitioner was out of India and the order of termination for unauthorised absence is not vitiated and in this regard the counsel relies on the following decisions.
(a) In Amgauda Sidram Hakke vs. Maharashtra Small Scale Industries Development Corporation Ltd., and another  (1995  I L.L.N. 923), the Bombay High Court held that Service Regulations giving power of termination of service by offering a month's notice in case of irregular absence without permission of the management would empower the management to terminate the services of a workman without holding a domestic enquiry.
(b) In Beemakunju vs. F.C.I. - (2001 II CLR 449), a Division Bench of the Kerala High Court considered the action on the part of management of F.C.I in terminating the services of a Watchman for unauthorised absence without holding enquiry and held as follows.
"11. ... When the service conditions provide for such procedure to dispense

with a domestic enquiry in the case of unauthorised absence and if the circumstances would also show that the workman concerned had been put to notice regarding the same, it is not mandatory to conduct a domestic enquiry for that only purpose. ..."

9. In both the above cases, the Service Regulations provided for procedure to dispense with a domestic enquiry in the case of unauthorised absence and in those circumstances the Courts have held that it is not mandatory to conduct a domestic enquiry for that purpose. In the present case, the learned counsel for the petitioner management produced a xerox copy of the Standing Orders of the Tamil Nadu Civil Supplies Corporation Limited for Workmen in the Modern Rice Mills and it does not provide for such a procedure to dispense with a domestic enquiry in the case of unauthorised absence. In such circumstance, conducting of a domestic enquiry is mandatory before taking disciplinary action against the workman for unauthorised absence and the above decisions do not apply to the facts of the present case.

10. As already seen, the petitioner herein has terminated the services of the second respondent without holding a domestic enquiry and the Labour Court has rightly held that such termination is illegal and passed an award reinstating the second respondent without backwages and giving liberty to the petitioner management to take disciplinary action for the unauthorised absence. The award of the Labour Court does not call for any interference and there are no merits in the writ petition.

11. The writ petition is dismissed. No costs.

Index: yes.

Internet: yes.
vks/gb.

To
The Presiding Officer,
Labour Court,
Cuddalore.

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